

Annie Catmull (Tex. Bar 00794932)
Edward L. Rothberg (Tex. Bar 17313990)
HOOVER SLOVACEK LLP
5847 San Felipe, Ste. 2200
Houston, TX 77057
P. (713) 977-8686
F. (713) 977-5395

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF WYOMING

BONTECOU CONSTRUCTION, INC. a Wyoming corporation,)	
Plaintiff,)	Civil Action No. 2:10-cv-00275-WFD
vs.)	
FIRST INTERSTATE BANK, a Montana Corporation, NADOWESSIOUX PROPERTIES, LTD., a Texas limited partnership, CHARLES M. HADEN, JR., individually, and SHELLEY HADEN, individually.)	
Defendants.)	
NADOWESSIOUX PROPERTIES, LTD., a Texas limited partnership and CHARLES M. HADEN, JR. individually)	
Plaintiffs,)	Civil Act. No. 2:10-cv-00280-ABJ
vs.)	
BONTECOU CONSTRUCTION, INC., a Wyoming corporation and STEVE BONTECOU, individually.)	
Defendants.)	

NADOWESSIOUX PROPERTIES, INC.'S RESPONSE TO THE MOTIONS TO REMAND FILED BY BONTECOU CONSTRUCTION, INC.

Nadowessioux Properties, Ltd. ("Nadowessioux") would respectfully show the Court:

Argument & Authority

1. *Venue motion.* There is substantial overlap among the factors that bear on whether venue should be transferred and/or a matter should be remanded to state court. For that reason, Nadowessioux incorporates by reference its motion to transfer venue to the Houston Bankruptcy Court assigned docket number 16 in civil action number 10-cv-2075.

2. *Jury right waived.* Bontecou has filed a proof of claim in Nadowessioux's bankruptcy case. In it Bontecou asserts the same claims it makes in this lawsuit. See the attached Exhibit A. It has therefore waived its right to a jury trial. See *Langenkamp v. Hackler (In re Republic Trust & Sav. Co.)*, 897 F.2d 1041, 1043 (10th Cir.), *rev'd in part on other grounds sub nom., Langenkamp v. Culp*, 498 U.S. 42, 112 L. Ed. 2d 343, 111 S. Ct. 330 (1990). (respondents who filed claims against the bankruptcy estate on a bankruptcy trustee's preference claim were not entitled to a jury trial).

3. *Pending claim objection proceeding.* In its bankruptcy case, Nadowessioux has filed an objection to the claim of Bontecou. A copy is attached and marked Exhibit B. Hearing on the objection is currently set for March 7, 2011. See the attached Exhibit C. Bontecou's claims in this lawsuit are the same claims that the Houston Bankruptcy Court will be adjudicating.

4. *"Core" issues.* Whether Bontecou's claim asserted in the bankruptcy case is a "core" bankruptcy issue. "Core proceedings include, but are not limited to—'(A) matters concerning the administration of the estate; "(B) allowance or disallowance of claims against the estate[.]'" *Marshall v. Marshall*, 547 U.S. 293, 303 (U.S. 2006) (quoting 28 U.S.C. 157§ (b)(2)). Importantly, a "determination that a proceeding is not a core proceeding shall not be made solely

on the basis that its resolution may be affected by State law.” 28 U.S.C. 157§ (b)(3).

5. *No stay relief sought or granted.* Bontecou has neither sought, much less been granted, relief from the automatic stay to pursue this lawsuit. See the bankruptcy case docket, attached and marked Exhibit D. Until the Houston Bankruptcy Court grants stay relief to Bontecou, if it ever does, this lawsuit is stayed by section 362(a) of title 11 of the U.S. Code.

PRAYER

Nadowessioux prays that the Court deny the motions to remand and grant Nadowessioux's motion to transfer venue to the Houston Bankruptcy Court.

DATED: January 27, 2011

Respectfully submitted,

HOOVER SLOVACEK LLP

By: s/ Annie Catmull

EDWARD L. ROTHBERG
Texas State Bar No. 17313990
ANNIE E. CATMULL
Texas State Bar No. 00794932
5847 San Felipe, Suite 2200
Houston, Texas 77057
Telephone: 713.977.8686
Facsimile: 713.977.5395
BANKRUPTCY ATTORNEYS FOR DEBTOR
AND DEFENDANT HEREIN,
NADOWESSIOUX PROPERTIES, LTD.

/s/MDS (by permission)

Mark D. Sullivan
Mark D. Sullivan, P.C.
5237 HHR Ranch Road
Wilson, Wyoming 83001
(307) 733-2021
ATTORNEY FOR DEBTOR
AND DEFENDANT HEREIN,
NADOWESSIOUX PROPERTIES, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2011, a true and correct copy of foregoing document was served (i) via the U.S. District Court's electronic notification system to andrea@arichardlaw.com, becca@arichardlaw.com, molly@arichardlaw.com and (ii) by first class mail upon the following:

Andrea L. Richard
The Richard Law Firm, P.C.
199 E. Pearl Ave., Suite 102
P.O. Box 1245
Jackson, WY 83001
Attorney for the Bontecou Parties

David Askanase
Hughes Watters Askanase
333 Clay, 29th Floor
Houston, TX 77002
Bankruptcy attorney for Bontecou Construction, Inc.

Mr. Charles M. Haden
Ms. Shelly Haden
Nadowessioux Properties, Ltd.
764 Kuhlman Rd.
Houston, TX 77024

Glen M. Ford
Garland, Ford & Potter LLC
P.O. Box 4310
Jackson, WY 83001
Attorney for First Interstate Bank

Matt Okin
Okin & Adams
1113 Vine St. Suite 201
Houston, Texas 77002
Bankruptcy attorney for First Interstate Bank

s/Annie Catmull
ANNIE CATMULL